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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Access Charge Reform

CC Docket No. 96-262

Price Cap Performance Review
for Local Exchange Carriers

CC Docket No. 94-1

Transport Rate Structure
and Pricing

CC Docket No. 91-213

End User Common Line Charges

CC Docket No. 95-72

Hyperion Telecommunications, Inc.'s Comments
in Support of AT&T and TCG Petitions for Reconsideration

Hyperion Telecommunications, Inc. ("Hyperion"), by its undersigned counsel and pursuant to Section 1.429 of the Commission's Rules and the Notice published in the Federal Register on August 1, 1997, hereby submits its Comments in support of certain aspects of Petitions for Reconsideration filed in the above-captioned docket.

I. INTRODUCTION AND BACKGROUND

Hyperion, an 89%-owned subsidiary of Adelphia Communications Corporation, is a diversified telecommunications company whose subsidiaries are providing or preparing to provide facilities-based local exchange telecommunications service in numerous markets throughout the United States. Hyperion, through its operating affiliates, currently has 17 operating networks, with five more currently under construction. As a new entrant in the local exchange market and a provider of competitive access services, Hyperion strongly supports an issue of fundamental importance to the promotion of competition in the access and transport markets that is addressed

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in the Petitions for Reconsideration of the Commission's Access Reform Order¹ filed by AT&T Corp. ("AT&T") and Teleport Communications Group, Inc. ("TCG"). Specifically, those petitioners ask the Commission to clarify that incumbent local exchange carriers ("LECs") may not assess the transport interconnection charge ("TIC") on customers that do not use the incumbent LECs' transport facilities effective July 1, 1997.

II. THE TEXT OF THE COMMISSION'S ORDER AND THE RATIONALE UNDERLYING THE TIC EXEMPTION CLEARLY REQUIRE INCUMBENT LECs TO STOP ASSESSING THE TIC ON CAPs EFFECTIVE JULY 1, 1997

In paragraph 64 of its Access Reform Order, the Commission clearly stated that the TIC would no longer be assessed on customers that do not use the incumbent LECs' transport facilities:

[b]eginning in July 1997, price cap reductions will be targeted to the per-minute residual TIC ... [which] shall be assessed only on incumbent LEC transport customers, and therefore shall no longer be assessed on ... CAPs that interconnect with the LEC switched network at the end office.

The Commission made numerous other findings in its Order which imply that the TIC exemption for customers that do not use the incumbent LECs' transport facilities was to become effective immediately. In paragraph 240, the Commission found that the

current policy, which requires competitive entrants to pay the TIC even in cases where it provides its own transport, is inconsistent with the procompetitive goals of the 1996 Act. We therefore modify our rules to permit incumbent LECs to assess any per-minute residual TIC charge only on minutes that utilize incumbent LEC transport facilities, and not on any switched minutes of CAPs that interconnect with the incumbent LEC switched access network at the end office.

¹ *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-157 (rel. May 16, 1997) ("Access Reform Order").

The Commission also concluded that the “new paradigm of promoting efficient competition” requires that “new entrants providing transport facilities in competition with the incumbent LEC not pay the TIC.” Access Reform Order at ¶192. The rationale underlying the TIC exemption for competitive providers of transport also strongly supports making the TIC exemption effective immediately:

As a per minute charge assessed on all switched access minutes, including those of competing providers of transport service that interconnect with the LEC switched access network through expanded interconnection, *the TIC adversely affects the development of competition in the interstate access market.*

Access Reform Order at ¶12 (emphasis added). Eliminating the TIC for customers that do not utilize the incumbent LECs’ transport facilities is, thus, clearly consistent with the pro-competitive goals of the Telecommunications Act of 1996 and the Commission’s goal of promoting competition in the access and transport markets.

Taken together, the Commission’s pronouncement, that it is “amending its rules” because the “new competitive paradigm” requires that new entrants be exempted from the TIC when providing their own transport facilities, clearly evidences the Commission’s intent to make the TIC exemption effective immediately. This intent is further supported by the fact that, in adopting other revisions to the transport rate structure, where the Commission intended a rule change to take effect at a later date, it specified that date.²

² See, e.g. reallocation of SS7 costs in TIC (effective 1/1/98) (para.217); reallocation of tandem switching costs in TIC (three equal annual steps beginning 1/1/98) (para. 218); elimination of three-part rate structure for tandem-switched transport (effective 7/1/98) (para. 168), etc.

It was not until the subsequent issuance of an Errata in the Access Reform Docket, released June 4, 1997, that the Common Carrier Bureau, pursuant to delegated authority, specified a later effective date for the TIC exemption. Paragraph 4 of the Errata added a new paragraph 461 to the original Access Reform Order. Buried in the long list of specific effective dates for specific rules is an effective date of January 1, 1998 for Rule 69.155. Subsection (c) of that rule sets forth the TIC exemption:

Any charge assessed pursuant to paragraph (a) or (b) shall be assessed only upon minutes utilizing the local exchange carrier's local transport service.

The charges assessed pursuant to paragraph (a) and (b) are the per-minute residual TIC charges. As AT&T aptly argued, the structural changes in paragraphs (a) and (b) are the only portions of this rule that need to take effect simultaneously with the other structural changes to the TIC (*i.e.*, reallocation of service-related costs to other elements and transition of the TIC to a flat-rated charge included in the Presubscribed Interexchange Carrier Charge).

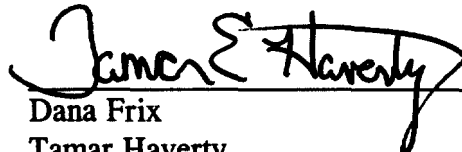
The Commission has been ordered by the Court of Appeals for the D.C. Circuit to either implement a cost-based rate structure for the TIC or offer a "rational and non-conclusory analysis in support of its determination that an alternative structure is preferable." *Competitive Telecommunications Association v. F.C.C.*, 87 F.3d 522, 536 (D.C. Cir. 1996). In light of the Commission's determinations quoted above, it can no longer justify imposition of the TIC on incumbent LECs' customers that do not use the incumbent LECs' transport facilities. The Commission should, therefore, revise the effective date of 47 C.F.R. § 69.155(c) or, preferably, rewrite the rule to make clear that incumbent LECs must immediately cease charging the TIC to customers that do not use the incumbent LECs' transport facilities.

III. CONCLUSION

For the foregoing reasons, Hyperion respectfully requests that the Commission reconsider the effective date for Rule 69.155(c), issued in the Errata released June 4, and require incumbent LECs to provide the TIC exemption contained in that rule immediately.

Respectfully submitted,

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